

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

280

CR-6908 of 2016

Date of Decision:25.05.2017

Shri Bans Guru Gaddi Kabir
Dharam Dass Bansawali Kabir
Dharam Nagar Damakhera

.....Petitioner

Versus

Duli Chand and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Ajay Jain, Advocate,
for the petitioner.

Mr.Amit Jain, Advocate,
for the respondents.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the order dated 20.09.2016 passed by the learned trial Court, whereby the plaintiffs were permitted to affix the court fee on the suit property ten times the land revenue, defendant has approached this Court by way of present revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued and in the meantime, further proceedings before the learned Court below were stayed.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that on this very issue, parties approached this Court by way of CR No.7152 of 2013 (**Duli Chand**

Bansawali Kabir Dharam Nagar Damakhera). Said revision petition was decided by this Court vide order dated 03.05.2016 (Annexure P-3) and the operative part thereof, which deserves to be noticed here, reads as under:-

“I have heard learned counsel for the parties and appraised the paper book and of the view that though the petitioner-plaintiffs are not party to the gift deed, yet they are seeking possession, therefore, they are liable to pay the Court fee as per the provisions of Section 7(v) of Indian Court Fees Act, for seeking possession.”

In compliance of the above-said order passed by this Court, learned trial Court passed the impugned order dated 20.09.2016 (Annexure P-5), however, completely misreading the relevant revenue record, wherein suit property bearing Rectangle No.144, Khasra No.16 (0-13), Khasra No.25 (2-5) have been recorded as *gair mumkin* shops. Similarly, the land in Rectangle No.152, Khasra No.5 (2-18) and Khasra No.6 (2-18) have been shown as *gair mumkin* Mandir (temple). Similar is the position regarding Rectangle No.153, Khasra No.1 (6-9), 29 (11-7). It is again shown as *gair mumkin* temple. Since the learned trial Court failed to appreciate this factual aspect of the matter before passing the impugned order, it is patently illegal order and the same cannot be sustained.

Had it been a simple agricultural land, the plaintiffs would have been liable to pay the court fee as directed by the learned trial Court vide impugned order. However, as noticed here-in-above, the suit land is not a simple agricultural land. There are commercial shops existing thereon in addition to the temple constructed in 3 Nos. as noticed here-in-above. Under these undisputed facts and circumstances of the case, provisions contained in Section 7(v) of the Court Fees Act would not be applicable, as

noticed by the learned trial Court, while passing the impugned order.

On the other hand, relevant provisions of law which shall be applicable to the facts of the case are contained in Section 7(v)(e) of the Court Fees Act and the plaintiffs shall be liable to pay the court fee in accordance with the above-said provisions of law. Since the learned trial Court did not advert to the above-said factual as well as legal aspect of the matter, while passing the impugned order, the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, impugned order dated 20.09.2016 (Annexure P-5) passed by the learned trial Court is hereby set aside and the plaintiffs-respondents are directed to pay the court fee, as per the provisions contained in Section 7(v)(e) of the Court Fees Act. Learned trial Court shall pass appropriate order pointing out the amount of court fee to be paid by the plaintiffs, granting them reasonable time.

Resultantly, with the above-said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

May 25, 2017
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(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No